IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1007 OF 1996.

Shripati Krishnaji Puranik
& anr. : Appellants.

versus

The State of Maharashtra : Respondent.

Mr.P.n.Karlekar for the appellants.
Mr.B.R.Pati, Acting Government Pleader, for the State/respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 28th APRIL 2005.

ORAL ORDER

1. Heard the advocate for the appellants/claimants and learned AGP for the State. This appeal is filed by the original claimants for enhancement of the compensation. The land of the claimants to the extent of 5 Hector and 10 R was acquired by notification

under Section 4 dated 30.3.1984. The Special Land Acquisition Officer awarded Rs.120/- per R. The claimants claimed Rs.2000/- per R. from the Reference Court. The reference Court, however, dismissed the reference. Hence this appeal.

2. The Counsel for the appellants contended that the land is situated within the limits of Alandi Municipal Council; that the claimants have relied upon the sale deed and proved it which shows that for N.A. land price, as per Exhibit 35, was Rs.344/- per R. He, therefore, contended that claimants were entitled for enhancement of compensation.

3. The learned AGP for the State however pointed out from the judgment as well as from the evidence that the claimants' land was surrounded by Indrayani river on one side and Nala on the other side. It was flooded in rainy season. Part of the land was fallow. There was no evidence that the claimants were reaping the crops from the irrigation. He also contended that if as per Exhibit 35, Rs.344/- was the price paid for NA land, then the reference court was justified in dismissing the claim of the

claimants.

4. All submissions of the learned AGP are not acceptable. It is true that the acquired land is surrounded by river Indrayani and Nala on both the sides, but not giving any portion of crops to the claimants by the tenants cannot be an indication that the land was fallow. The tenants generally do not give anything to the landlord and they appropriate all the fruits to themselves. The land is admittedly within the Municipal Limit, though it is put to agricultural use at the time of acquisition, the fact that it has NA potentiality cannot be discarded. The sale deed relied upon by the claimants (Exhibit 35) is of the relevant period. It is of 1982 i.e. two years prior to the notification under Section 4. The land which was the subject matter of the sale deed was in the municipal limits, but was converted to NA use. The land acquired has NA Potentiality but actually it was not converted to NA use. Therefore, considering this aspect it becomes clear that the claimants were entitled for enhancement.

5. This appeal was partly heard by me on

26th April 2005 and when I was dictating the judgment, the learned AGP contended that the aspect of deducting development charges required consideration. The matter was, therefore, adjourned to 27.04.2004. Advocate for the claimants prayed for time on 27.04.2005. Therefore the matter is kept today. But it is not shown on board. By consent, it is taken on board.

6. Now on the basis of Supreme Court judgment reported in **(2003) 1 SCC 354 [Kasturi & others v/s. State of Haryana]** he contended that looking to the fact that the acquired land was surrounded by Indrayani river and one Nala, the development charges to the extent of 20% should be deducted from the amount of compensation.

7. On the other hand, advocate for the claimants contended that the claimants have already produced and proved the sale deed where Rs.344/- per R has been the purchase price in the year 1982 for non agricultural land. He contended that the acquired land was situated within the municipal limits of Alandhi which is 13 kms. from Pune and, considering the NA

potentiality adequate compensation is required to be given.

8. So far as deduction of development charges is concerned, this Court in a Group of Appeals vide First Appeal No.875/85 and others decided by the Division Bench [Justice A.P.Shah and Justice J.A.Patil] on 16th March 2000 has awarded 10% development charges. In other Group of Appeals vide Appeal No.695\92 and others when the learned AGP relied upon the same judgment of the Supreme Court referred to above then looking to the distance of the land 15% development charges considered proper. In view of this, the contention of the learned APP that the development charges are required to be deducted has to be accepted. At the same time the contention of the claimants's advocate for enhancement of the compensation looking to the location of the land and NA potentiality has to be accepted.

9. The SLAO has awarded Rs.20/- per R only. The sale deed proved by the claimants is for Rs.344/- per R. Therefore, considering this

aspect and the aforesaid facts, Rs.300/- per R would be the proper compensation out of which 15% would be deducted towards the development charges. Hence the following order :-

:ORDER:

The appeal is partly allowed.

The appellants/claimants will be entitled to Rs.300/- per R. as compensation for the acquired land with all proportionate statutory benefits.

Out of the amount of compensation so awarded 15% will be deducted from the development charges from the compensation.

No order as to costs.

[D.G.DESHPANDE]

28/04/2005 JUDGE.